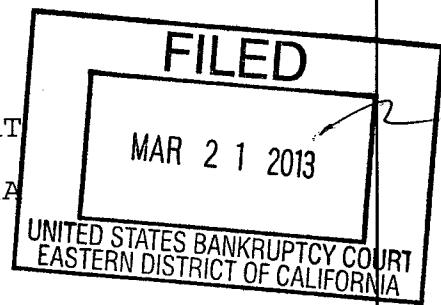


UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION



In re:)
BRENT LAWRENCE,)
Debtor.)

WILLIAM ROBINSON, JR.,)
Plaintiff,)
vs.)
BRENT LAWRENCE,)
Defendant)

Case No. 09-20375-B-7
Adv. No. 12-2277-B
DCN DD-2

MEMORANDUM DECISION ON MOTION FOR IMPOSITION OF SANCTIONS

PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9011

Defendant debtor Brent Lawrence asks the court to assess sanctions, pursuant to Federal Rule of Bankruptcy Procedure 9011, against plaintiff creditor and the creditor's attorney for filing the complaint in this adversary proceeding. The complaint seeks a determination of nondischargeability of a debt. Defendant seeks sanctions based on the existence, at the time the complaint was filed, of a dispositive, albeit waivable affirmative defense of the statute of limitations.

For the reasons set forth herein, in this case the court

1 grants the motion in part, finds that the filing of the complaint
2 constituted a violation of Bankruptcy Rule 9011(b)(2) which
3 justifies an imposition of sanctions, and assesses sanctions on
4 the creditor's attorney in the amount of \$16,046.90 in attorney's
5 fees and costs payable to the defendant's attorney.

6

7 FACTUAL BACKGROUND

8 On January 9, 2009, debtor Brent Lawrence ("Debtor" or
9 "Lawrence") commenced a bankruptcy case (the "Bankruptcy Case")
10 by filing a voluntary petition under chapter 7 of the Bankruptcy
11 Code. Lawrence filed his Verification of Master Address List
12 (the "Master Address List") on January 9, 2009. The Master
13 Address list listed "Nancy Butch Robinson" as a creditor.
14 Lawrence filed his bankruptcy Schedules on January 26, 2009. On
15 his Schedule F he listed "Nancy & Butch Robinson" as unsecured
16 creditors holding an unsecured nonpriority claim in the amount of
17 \$866,276.00. Butch is the nickname of plaintiff William
18 Robinson, Jr. ("Plaintiff" or "Robinson").

19 Pursuant to the Notice of Chapter 7 Bankruptcy Case, Meeting
20 of Creditors & Deadlines (the "Bankruptcy Notice") filed in the
21 Bankruptcy Case, the deadline to file a proof of claim was May 7,
22 2009, and the deadline to file a complaint objecting to the
23 discharge of the debtor or to determine the dischargeability of
24 certain debts was April 7, 2009. Robinson was served with the
25 Bankruptcy Notice.

26

27

1 Robinson did not file a claim in the Bankruptcy Case, nor
2 did he file a complaint objecting to the debtor's discharge or to
3 determine the dischargeability of a debt before the deadline set
4 forth in the Bankruptcy Notice. Robinson did not file a motion
5 to extend the deadline pursuant to Fed. R. Bankr. P. 4007(c).
6 Lawrence received a discharge under 11 U.S.C. § 727 on May 12,
7 2009. The chapter 7 trustee was discharged and the Bankruptcy
8 Case was closed on April 28, 2011.

9 On June 21, 2012, the court reopened the Bankruptcy Case on
10 Robinson's motion. On June 22, 2012, long after the deadlines
11 established by the Bankruptcy Notice to do so, Robinson filed a
12 complaint (the "Complaint") commencing an adversary proceeding
13 for a determination of the dischargeability of a debt and seeking
14 revocation of Lawrence's discharge.

15 The Complaint alleges the following. Lawrence and a third
16 party, Jason Morehouse, purchased real property located at 46 Ord
17 Ranch Road, Gridley, California (the "Property") from Robinson on
18 or about August 7, 2006. In escrow, Lawrence and Morehouse
19 assigned their rights in the Property and the purchase agreement
20 to 46 Ord Ranch Road, LLC ("the LLC"). A portion of the purchase
21 price was paid in cash; the remainder was to be paid pursuant to
22 the terms of a promissory note (the "Note") made by the LLC and
23 carried back by the Robinson. The Note was secured by a Deed of
24 Trust on the Property.

25 The Complaint alleges that Lawrence subsequently represented

1 to Robinson that if Robinson would subordinate the Deed of Trust
2 to another Deed of Trust (the "RVCB Deed of Trust") for the
3 benefit of River Valley Community Bank ("RVCB"), which RVCB Deed
4 of Trust secured a loan to the LLC from RVCB, Lawrence would
5 personally guarantee the Note. The Complaint alleges that
6 Lawrence provided Robinson with a statement of his net worth and
7 a declaration representing that the loan proceeds from RVCB would
8 be used to make specific improvements to the Property and for no
9 other purpose. The Complaint alleges that these representations
10 were false, designed to induce Robinson to subordinate the Deed
11 of Trust to the RVCB Deed of Trust, and that Lawrence never
12 intended to use the RVCB loan proceeds to improve the Property.
13 Robinson subordinated the Deed of Trust. The Complaint alleges
14 that the RVCB loan proceeds were never used to improve the
15 Property and were instead diverted to Lawrence's and Morehouse's
16 personal use.

17 The Complaint also alleges that Robinson learned that the
18 loan proceeds from RVCB had not been used to improve the Property
19 in February, 2012. He alleges that he "did not learn of the
20 fraud" until February 7, 2012. At the time that he learned of
21 Lawrence's alleged fraud, Robinson was already prosecuting an
22 action against Morehouse in Butte County Superior Court (the
23 "State Court Action").

24 On February 22, 2012, before the instant adversary
25 proceeding was commenced, Lawrence's bankruptcy attorney sent a
26 letter (the "February 22, 2012, Letter") to Robinson's counsel in
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1 the State Court Action, advising him of Lawrence's discharge and
2 the expiration of the deadline to file a complaint objecting to
3 Lawrence's discharge or to seek a determination of
4 nondischargeability. According to the February 22, 2012, Letter,
5 Lawrence was concerned that Robinson would attempt to amend the
6 complaint in the State Court Action to add Lawrence as a
7 defendant, in violation of the discharge injunction in the
8 Bankruptcy Case.

9 On June 29, 2012, seven days after Robinson commenced the
10 adversary proceeding, Lawrence's bankruptcy attorney sent a
11 letter (the "June 20, 2012, Letter") to Robinson's counsel in the
12 adversary proceeding, advising him of Lawrence's discharge and
13 the expiration of the deadline to file a complaint objecting to
14 Lawrence's discharge or to seek a determination of
15 nondischargeability. The June 29, 2012, Letter demanded that
16 Robinson voluntarily dismiss the adversary proceeding within ten
17 days, failing which Lawrence would seek, *inter alia*, sanctions to
18 the extent allowed by Fed. R. Bankr. P. 9011.

19 Lawrence filed a motion to dismiss pursuant to Fed. R Civ.
20 P. 7012, incorporating Fed. R. Civ. P. 12(b) (6), on August 20,
21 2012. Robinson opposed the motion. The court granted the motion
22 on October 1, 2012, dismissing the adversary proceeding without
23 leave to amend. The court dismissed Robinson's claims because
24 they were time barred, the Complaint having been filed long after
25 the expiration of the deadline to assert the claims contained
26 therein. Although Robinson argued that the deadlines should be
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1 equitably tolled because he alleged that he did not discovery
2 Lawrence's alleged fraud until after the deadlines had passed,
3 the court ruled that equitable tolling did not apply to extend
4 the deadlines, citing In re Santos, 112 B.R. 1001 (9th Cir. BAP
5 2001). The court noted that the only exception in the Ninth
6 Circuit allowing equitable tolling was in the case of
7 "extraordinary circumstances" where the court itself misleads a
8 party into the untimely filing of a complaint. Allred v.
9 Kennerly (In re Kennerly), 995 F.2d 145 (9th Cir. 1993); Anwiler
10 v. Patchett (In re Anwiler), 958 F.2d 925, 927 (9th Cir. 1992).
11 The court found that the Complaint did not allege any such
12 extraordinary circumstances. In addition, the court dismissed
13 Robinson's claim for revocation of the debtor's discharge under
14 11 U.S.C. § 727(d)(1) because Robinson did not allege any facts
15 which supported a claim that the debtor obtained his discharge by
16 fraud.

17 Also on August 20, 2012, Lawrence sent another letter to
18 Robinson's counsel (the "August, 20, 2012, Letter"), to which was
19 attached a copy of the instant Motion for Sanctions Pursuant to
20 (the "Motion"). The August 20, 2012, Letter informed Robinson's
21 counsel that Lawrence intended to file the motion unless Robinson
22 voluntarily dismissed the adversary proceeding. When Robinson
23 did not dismiss the adversary proceeding, Lawrence filed the
24 Motion on September 21, 2012.

1 ANALYSIS
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3 Pursuant to Federal Rule of Bankruptcy Procedure 4004(a), in
4 a chapter 7 case a complaint objecting to the debtor's discharge
5 shall be filed no later than 60 days after the first date set for
6 the meeting of creditors under 11 U.S.C. § 341(a). Pursuant to
7 Bankruptcy Rule 4007(c) the same deadline applies for complaints
8 filed under 11 U.S.C. § 523(c) to determine the dischargeability
9 of a debt. Both deadlines may be extended for cause, but motions
10 for extension must be filed before the expiration of the
deadline. Fed. R. Bankr. P. 4004(b), 4007(c).

11 The time limits set forth in Bankruptcy Rules 4007(c) and
12 4004(a) are not jurisdictional time limits. In re Santos, 112
13 B.R. 1001, 1006 (9th Cir. BAP 2001). As such, the timeliness of
14 a complaint for denial of discharge or for a determination of
15 dischargeability is an affirmative defense that must be raised in
16 an answer or a responsive pleading; if not raised, it is
17 generally waived, subject to the discretion of trial court. Id.
18 at 1008 (describing factors the court should consider when
19 determining whether a failure to timely raise a limitations
20 defense should constitute a waiver).

21 Pursuant to Bankruptcy Rule 9011(b), an attorney or
22 unrepresented party presenting to the court a petition, pleading,
23 written motion or other paper is certifying that to the best of
24 the person's belief, formed after an inquiry reasonable under the
25 circumstances, that

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Fed. R. Bankr. P. 9011(b)(1)-(4). Bankruptcy Rule 9011(b)(1)-(4) mirrors Fed. R. Civ. P. 11(b)(1)-(4).

In In re Aston-Nevada Ltd. Partnership, 409 Fed.Appx. 107 (9th Cir. 2010), the Ninth Circuit Court of Appeals described the standards governing a motion for imposition of sanctions where a violation of Bankruptcy Rule 9011(b)(1) or (b)(2) is found:

Rule 9011 gives bankruptcy courts the authority to sanction parties, attorneys, and law firms who present

1 (sign, file, submit, or later advocate) a paper to a
2 bankruptcy court that is either frivolous or presented
3 for an improper purpose. See Fed. R. Bankr.P. 9011(b),
4 (c); Dressler v. Seeley Co. (In re Silberkraus), 336
5 F.3d 864, 870 (9th Cir.2003). "In determining whether
6 sanctions are warranted under Rule 9011(b), [this
7 court] ... must consider both frivolousness and
8 improper purpose on a sliding scale, where the more
9 compelling the showing as to one element, the less
10 decisive need be the showing as to the other."

11 Dressler, 336 F.3d at 870 (internal quotation marks and
12 citations omitted) (emphasis in original). For
13 sanctions' purposes under Rule 9011, "attorney conduct
14 is measured objectively against a reasonableness
15 standard, which consists of a competent attorney
16 admitted to practice before the involved court." Valley
17 Nat'l Bank of Ariz. v. Needler (In re Grantham Bros.),
18 922 F.2d 1438, 1441 (9th Cir.1991) (citation omitted).
19 "A claim is frivolous if it is both baseless and made
20 without a reasonable and competent inquiry." Id. at
21 1442 (internal quotation marks and citation omitted).
22 And, "[a]lthough the term 'improper purpose' can be
23 construed to require an improper subjective intent,
24 this court analyzes an allegedly improper purpose under
25 an objective standard." Id. at 1443.

26 In re Aston-Nevada Ltd. Parntership, 409 Fed.Appx. 107, 114 (9th
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1 Cir. 2010). A sanction imposed for violation of Bankruptcy Rule
2 9011(b) shall be limited to what is sufficient to deter
3 repetition of such conduct or comparable conduct by others
4 similarly situated. To that end, the court may order that the
5 sanctioned party pay a penalty into the court, and/or that the
6 sanctioned party pay the movant's reasonable attorney's fees and
7 other expenses incurred as a direct result of the violation.
8 Fed. R. Bank. P. 9011(c)(2); see also In re Blue Pine Group, Inc., 457 B.R. 64, 78 (9th Cir. BAP 2011) ("sanctions may include
9 'some or all of the reasonable attorneys' fees and expenses
10 incurred as a direct result of the violation'"); and Truesdell v. Southern California Permanente Medical Group, 209 F.R.D. 169, 175
11 (C.D. Cal. 2002) (monetary sanctions may include "either or both"
12 of a penalty paid to the court "and/or" an award of reasonable
13 attorney's fees to the opposing party). Monetary sanctions may
14 not be awarded against a represented party for a violation of
15 Bankruptcy Rule 9011(b)(2). Fed. R. Bankr. P. 9011(c)(2)(A). An
16 award of attorneys' fees to the opposing party may also be
17 granted only on motion and only when warranted for effective
18 deterrence. Fed. R. Bankr. P. 9011(c).

21 Pursuant to Bankruptcy Rule 9011(c)(1)(A), a motion for
22 sanctions under Bankruptcy Rule may not be filed with or
23 presented to the court unless, within twenty-one days after
24 service of the motion, the challenged paper, claim, defense,
25 contention, allegation, or denial is not withdrawn or
26 appropriately corrected. In this case, Lawrence served Robinson
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1 with the Motion on August 20, 2012, and, when Robinson did not
2 dismiss the Complaint, filed the Motion on September 21, 2012,
3 thirty-two days later.

4 Although neither Robinson nor Lawrence identified or
5 addressed it in their written arguments, at issue here is
6 whether, given the existence of the waivable defense of the
7 statute of limitations, Robinson's filing of the Complaint
8 constitutes either a pleading presented for an improper purpose
9 pursuant to Bankruptcy Rule 9011(b)(1) or a frivolous claim
10 pursuant to Bankruptcy Rule 9011(b)(2). There is no controlling
11 authority in the Ninth Circuit which squarely addresses the
12 foregoing issue. However, three other federal circuit courts of
13 appeal have done so.

14 In Brubaker v. City of Richmond, 943 F.2d 1363 (4th Cir.
15 1991), the Fourth Circuit Court of Appeals reviewed a district
16 court award of Rule 11 sanctions against a plaintiff for bringing
17 a defamation claim against a city, city council member and the
18 executive director of a human relations commission because "a
19 reasonable inquiry into Virginia limitations law would have
20 demonstrated that any defamation claims . . . were clearly time-
21 barred." Id. at 1383-84. The Fourth Circuit affirmed the
22 decision.

23 [W]e would still conclude that a plaintiff cannot avoid
24 Rule 11 sanctions merely because a defense to the claim
25 is an affirmative one. A pleading requirement for an
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1 answer is irrelevant to whether a complaint is well
2 grounded in law. Were we to follow plaintiffs'
3 suggestion, we would be permitting future plaintiffs to
4 engage in the kind of "cat and mouse" game that
5 Brubaker engaged in here: alleging a time-barred claim
6 to see whether the defendants would catch this defense,
7 continuing to pursue the claim after a defendant
8 pointed out that it was time-barred, urging the court
9 not to dismiss the claim, and finally conceding without
10 argument to the contrary that the claim was
11 time-barred.

12 Where an attorney knows that a claim is time-
13 barred and has no intention of seeking reversal of
14 existing precedent, as here, he makes a claim
15 groundless in law and is subject to Rule 11 sanctions.

16 Id. at 1384-85 (footnotes omitted). Sanctions are warranted where
17 the claimant has "absolutely no chance of success under existing
18 precedent."

19 Id. at 1377.

20 In Souran v. Travelers Insurance Co., 982 F.2d 1497 (11th
21 Cir. 1993), the Eleventh Circuit Court of Appeals reversed the
22 imposition of sanctions against a plaintiff who filed an action
23 on an insurance policy in the face of a potential affirmative
24 defense of fraudulent procurement:

25 An unasserted defense is no defense at all. . .

1 [P]laintiffs need not refrain from filing suit to avoid
2 Rule 11 sanctions simply because they know that
3 defendants will interpose an affirmative defense. Two
4 other circuits have held that the assertion of a claim
5 knowing that it will be barred by an affirmative
6 defense is sanctionable under Rule 11. See Brubaker v.
7 City of Richmond, 943 F.2d 1363, 1383-85 (4th
8 Cir.1991); White v. General Motors Corp., 908 F.2d 675,
9 682 (10th Cir.1990). Here, however, Souran did not know
10 that counts I and II would suffer defeat at the hands
11 of Travelers' fraudulent procurement defense. . . . In
12 no way do the facts unequivocally establish that
13 Travelers' affirmative defense of fraudulent
14 procurement would succeed. At most, the facts are
15 inconclusive and present a jury question as to whether
16 Mr. Von Bergen fraudulently procured the policy. In the
17 face of such uncertainty, Rule 11 sanctions . . . were
18 not proper.

19 Souran, 982 F.2d at 1510(emphasis added).
20

21 Finally, in White v. General Motors Corp., 908 F.2d 675
22 (10th Cir. 1990), a case discussed Souran, the Tenth Circuit
23 Court of Appeals stated:

24 Part of a reasonable attorney's prefilng investigation
25 must include determining whether any obvious
26 affirmative defenses bar the case. (citations omitted).
27

1 An attorney need not forbear to file her action if she
2 has a colorable argument as to why an otherwise
3 applicable affirmative defense is inapplicable in a
4 given situation. For instance, an otherwise time-barred
5 claim may be filed, with no mention of the statute of
6 limitations if the attorney has a nonfrivolous argument
7 that the limitation was tolled for part of the period.
8 The attorney's argument must be nonfrivolous, however;
9 she runs the risk of sanctions if her only response to
10 an affirmative defense is unreasonable.

11 Id. at 682 (emphasis added). See also David H. Taylor, Filing
12 With Your Fingers Crossed: Should a Party Be Sanctioned For
13 Filing a Claim to Which There is A Dispositive, Yet Waivable,
14 Affirmative Defense?, 47 Syracuse L. Rev. 1037 (1997) for a
15 discussion of Brubaker, Souran, and White. Taylor places the
16 three cases on a spectrum, with Brubaker characterized as a "hard
17 line," Souran being a softer, "no sanctions" approach that takes
18 into account the pleading burdens on each side of an action and
19 White occupying a middle ground where sanctions are appropriate
20 if the affirmative defense is obvious and the plaintiff's
21 attorney has no colorable, nonfrivolous argument as to why the
22 defense is inapplicable.

23 This court follows the approach set forth in White. The
24 court concludes, on the facts of this case, that the filing of
25 the Complaint asserting a claim for a determination of
26 nondischargeability is a sanctionable violation of Fed. R. Bankr.
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1 P. 9011(b) (2). When preparing and filing a complaint for a
2 determination of nondischargeability, a reasonable attorney would
3 investigate whether the deadline for filing such a claim had
4 passed. In this case the deadline was clearly set forth in the
5 Bankruptcy Notice. The deadline, as well as the circumstances
6 under which it may be extended, are clearly defined in Fed. R.
7 Bankr. P. 4007. In addition, Lawrence informed Robinson and his
8 counsel on two separate occasions - one well before the adversary
9 proceeding was commenced and one shortly after - of the fact that
10 the deadline had passed and that Robinson's complaint was time-
11 barred. In light of the foregoing the burden fell on Robinson to
12 determine he had colorable, non-frivolous argument in support
13 filing the Complaint despite the expiration of the deadline.

14 Robinson has not shown that any such argument exists. He
15 merely argues that it would be inequitable to prevent him from
16 bringing a nondischargeability claim based on Lawrence's alleged
17 fraud because he allegedly did not discover the fraud until after
18 the deadline has passed.¹ However, the Ninth Circuit Bankruptcy
19

20 ¹Nothing in this decision shall be construed as a finding as
21 to when Robinson's claim for alleged fraud arose for the purposes
22 of Lawrence's bankruptcy case. Although claims are determined as
23 of the date of the filing of the petition, the "accrual test"
24 espoused by Robinson for determining when a claim arises is not a
25 popular one, and is not followed in this circuit. See In re
26 Grossman's Inc., 607 F.3d 114 (3rd. Cir. 2010) (collecting cases).
27 In this circuit, the test is the "fair contemplation test" in
which a claim arises once it is in the creditor's fair
contemplation. California Department of Health Services v.
Jensen (In re Jensen), 995 F.2d 925 (9th Cir. 1993). The
Northern District has applied the fair contemplation test to a
fraud claim. Corman v. Morgan (In re Morgan), 197 B.R. 892, 898

1 Appellate Panel has rejected this argument (see In re Santos, 112
2 B.R. 1001, 1006 (9th Cir. BAP 2001) ("The running of the [time
3 period within which to file a claim for nondischargeability] is
4 not dependent on the discovery or accrual of a cause of action as
5 it would be in a statute to which tolling is more appropriately
6 applied.")) and the Ninth Circuit Court of Appeals has held that
7 the after the expiration of the deadline it can only be extended
8 or tolled where there are extraordinary circumstances involving
9 the court misleading the creditor regarding the deadline (see
10 Allred v. Kennerly (In re Kennerly), 995 F.2d 145 (9th Cir.
11 1993); Anwiler v. Patchett (In re Anwiler), 958 F.2d 925, 927
12 (9th Cir. 1992)). No such extraordinary circumstances are
13 present in this case. Robinson's vague arguments regarding his
14 perception of the fairness of the applicable authority, no matter
15 how passionately presented, do not constitute a colorable, non-
16 frivolous argument as to why Lawrence's affirmative defense was
17 inapplicable.

18 The court does not find that the filing of the Complaint was
19 done for an improper purpose in violation of Fed. R. Bankr. P.
20 9011(b)(1). An improper purpose is generally found where the
21 evidence shows that the party against whom sanctions are sought
22 has engaged in a pattern of abusive litigation for the purpose of
23 delay or harassment. See Aetna Life Ins. Co. v. Alla Med.
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25 (N.D. Cal. 1996). The court's ruling on the Motion to Dismiss
26 stated that the Complaint, which allegedly sought a determination
27 of nondischargeability of an alleged pre-filing debt pursuant to
11 U.S.C. § 523(a)(2)(A), was dismissed.

1 Servs., Inc., 855 F.2d 1470, 1476 (9th Cir. 1988). Whether a
2 party has been harassed is based on an objective standard.
3 Zaldivar v. City of Los Angeles, 780 F.2d 823, 832 (9th Cir.
4 1986) (harassment focuses on improper purpose of signer,
5 objectively tested, rather than consequences of signer's act,
6 subjectively viewed by signer's opponent). Although the court
7 acknowledges that Lawrence feels that he has been inconvenienced
8 by being forced to defend against the Complaint, the court does
9 not find evidence of a pattern of abusive litigation or
10 harassment in this case. The court will not infer an improper
11 purpose from the fact that it has found a violation of Bankruptcy
12 Rule 9011(b)(2). See Simon DeBartolo Group, L.P. v. Richard E.
13 Jacobs Group, Inc., 186 F.3d 157, 176-177 (2d Cir. 1999).

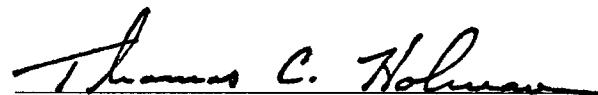
14 Because the court finds that the filing of the Complaint
15 constitutes a violation of Bankruptcy Rule 9011(b)(2) only, the
16 court will not impose monetary sanctions on Robinson. Fed. R.
17 Bankr. P. 9011(c)(2)(A). The court may impose non-monetary
18 sanctions on Robinson, but in light of the fact that the
19 adversary proceeding has already been dismissed, the court
20 declines to impose a non-monetary sanction.

21 As for Robinson's attorney in the adversary proceeding, W.
22 Steven Shumway, the court finds on the facts of this case that an
23 award of Lawrence's attorney's fees in the amount of \$16,046.90
24 incurred in connection with defending the adversary proceeding,
25 payable to Lawrence's counsel, will effectively serve the
26 overriding deterrent purpose of Bankruptcy Rule 9011. The award
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1 of attorneys' fees sends a message to Mr. Shumway and to those
2 similarly situated that the risk of pursuing frivolous litigation
3 in a case such as this is that those who do so may be required to
4 pay for the cost of defending it.

5 The court will issue a separate order that conforms to the
6 foregoing decision.

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10 Dated: MAR 21 2013


Thomas C. Holman
United States Bankruptcy Judge

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

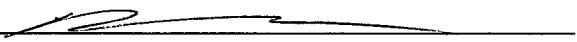
The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was served by mail to the following entities listed at the address(es) shown below.

Office of the US Trustee
501 I St, Ste 7-500
Sacramento, CA 95814

Walter Dahl
2304 N St
Sacramento, CA 95816-5716

W. Shumway
300 Harding Blvd., Suite 116
Roseville, CA 95678

DATED: 3/21/13

By: 
Deputy Clerk
R. Lopez